

Internal Revenue Service, Treasury

§ 49.4251-4

person rendering the services who is required to collect the tax and return and pay over the tax.

[T.D. 6664, 28 FR 7252, July 16, 1963, as amended by T.D. 8442, 57 FR 48186, Oct. 22, 1992]

§ 49.4251-3 Applicability of sections 4251 to 4254, inclusive.

Except as otherwise provided in this section, the applicability of sections 4251 to 4254, inclusive, as amended and in effect on January 1, 1959, and the regulations in this subpart extends only to amounts paid on or after January 1, 1959, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after January 1, 1959, for services for which no previous bill was rendered, the sections of law and regulations referred to in the preceding sentence are applicable in respect of that portion of the amount paid pursuant to such bill or bills as is attributable to services rendered subsequent to October 31, 1958. For regulations applicable with respect to amounts paid for services rendered prior to November 1, 1958, and amounts paid for services rendered after October 31, 1958, for which a bill was rendered prior to January 1, 1959, see Part 42 of this chapter. See also §§ 49.0-3 and 49.0-4, relating to the scope of the regulations and the extent to which prior regulations are superseded.

§ 49.4251-4 Prepaid telephone cards.

(a) *In general.* In the case of communications services acquired by means of a prepaid telephone card (PTC), the face amount of the PTC is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred by any carrier to any person that is not a carrier. This section provides rules for the application of the section 4251 tax to PTCs.

(b) *Definitions.* The following definitions apply to this section:

Carrier means a telecommunications carrier as defined in 47 U.S.C. 153.

Comparable PTC means a currently available dollar card or tariffed unit card (other than a PTC transferred in bulk or under special circumstances, such as for promotional purposes) that provides the same type and amount of

communications services as the PTC to which it is being compared.

Dollar card means a PTC the value of which is designated by the carrier in dollars (even if also designated in units of service), provided that the designated value is not less than the amount for which the PTC is expected to be sold to a holder.

Holder means a person that purchases other than for resale.

Prepaid telephone card (PTC) means a card or similar arrangement that permits its holder to obtain a fixed amount of communications services by means of a code (such as a personal identification number (PIN)) or other access device provided by the carrier and to pay for those services in advance.

Tariff means a schedule of rates and regulations filed by a carrier with the Federal Communications Commission.

Tariffed unit card means a unit card that is transferred by a carrier—

(1) To a holder at a price that does not exceed the designated number of units on the PTC multiplied by the carrier's tariffed price per unit; or

(2) To a transferee reseller subject to a contractual or other arrangement under which the price at which the PTC is sold to a holder will not exceed the designated number of units on the PTC multiplied by the carrier's tariffed price per unit.

Transferee means the first person that is not a carrier to whom a PTC is transferred by a carrier.

Transferee reseller means a transferee that purchases a PTC for resale.

Unit card means a PTC other than a dollar card.

Untariffed unit card means a unit card other than a tariffed unit card.

(c) *Determination of face amount—*(1) *Dollar card.* The face amount of a dollar card is the designated dollar value.

(2) *Tariffed unit card.* The face amount of a tariffed unit card is the designated number of units on the PTC multiplied by the tariffed price per unit.

(3) *Untariffed unit card—*(i) *Transfer to holder.* The face amount of an untariffed unit card transferred by a carrier to a holder is the amount for which the carrier sells the PTC to the holder.

(ii) *Transfer to transferee reseller*—(A) *In general.* The face amount of an untariffed unit card transferred by a carrier to a transferee reseller is at the option of the carrier—

(1) The highest amount for which the carrier sells a PTC that provides the same type and amount of communications services to a holder that ordinarily would not be expected to buy more than one such PTC at a time (if the carrier makes such sales on a regular and arm's-length basis) or the face amount of a comparable PTC (if the carrier does not make such sales on a regular and arm's-length basis);

(2) 135 percent of the amount for which the carrier sells the PTC to the transferee reseller (including in that amount, in addition to any sum certain fixed at the time of the sale, any contingent amount per unit multiplied by the designated number of units on the PTC); or

(3) If the PTC is of a type that ordinarily is used entirely for domestic communications service, the maximum number of minutes of domestic communications service on the PTC multiplied by the applicable rate.

(B) *Applicable rate.* The applicable rate under paragraph (c)(3)(ii)(A)(3) of this section with respect to a PTC is \$0.30 reduced (but not below \$0.20) by \$0.01 for each full 20 minutes by which the maximum number of minutes of domestic communications service on the PTC exceeds 40 minutes.

(C) *Sales not at arm's length.* In the case of a transfer of an untariffed unit card by a carrier to a transferee reseller otherwise than through an arm's-length transaction, the fair market retail value of the PTC shall be substituted for the amount determined in paragraph (c)(3)(ii)(A)(2) of this section.

(4) *Exclusion.* The amount of any state or local tax imposed on the furnishing or sale of communications services that is separately stated in the bill or on the face of the PTC and the amount of any section 4251 tax separately stated in the bill or on the face of the PTC are disregarded in determining, for purposes of this paragraph (c), the amount for which a PTC is sold.

(d) *Liability for tax*—(1) *In general.* Under section 4251(d), the section 4251(a) tax is imposed on the transfer of a PTC by a carrier to a transferee. The person liable for the tax is the transferee. Except as provided in paragraph (d)(2) of this section, the person responsible for collecting the tax is the carrier transferring the PTC to the transferee. If a holder purchases a PTC from a transferee reseller, the amount the holder pays for the PTC is not treated as an amount paid for communications services and thus tax is not imposed on that payment.

(2) *Effect of statement that purchaser is a carrier*—(i) *On transferor.* A carrier that transfers a PTC to a purchaser is not responsible for collecting the tax if, at the time of transfer, the transferor carrier has received written notification from the purchaser that the purchaser is a carrier, and the transferor has no reason to believe otherwise. The notification to be provided by the purchaser is a statement, signed under penalties of perjury by a person with authority to bind the purchaser, that the purchaser is a carrier (as defined in paragraph (b) of this section). The statement is not required to take any particular form.

(ii) *On purchaser.* If a purchaser that is not a carrier provides the notification described in paragraph (d)(2)(i) of this section to the carrier that transfers a PTC, the purchaser remains liable for the tax imposed on the transfer of the PTC.

(3) *Exemptions.* Any exemptions available under section 4253 apply to the transfer of a PTC from a carrier to a holder. Section 4253 does not apply to the transfer of a PTC from a carrier to a transferee reseller.

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Unit card; sold to individual. (i) On May 1, 2000, A, a carrier, sells a card it calls a prepaid telephone card at A's retail store to P, an individual, for P's use in making telephone calls. A provides P with a PIN. The value of the card is not denominated in dollars, but the face of the card is marked 30 minutes. The sales price is \$9. A tariff has not been filed for the minutes on the card. The toll telephone service acquired by purchasing the card will be obtained by entering

the PIN and the telephone number to be called.

(ii) Because P purchased from a carrier other than for resale, P is a holder. The card provides its holder, P, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, for which P pays in advance of obtaining service; therefore, the card is a PTC. Because the value of the PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, the PTC is an untariffed unit card. Because it is transferred by the carrier to the holder, the face amount is the sales price (\$9).

(iii) The card is a PTC; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from A to P. Accordingly, at the time of transfer, P is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is \$0.27 ($3\% \times$ the \$9 face amount). Thus, the total paid by P is \$9.27, the \$9 sales price plus \$0.27 tax. A is responsible for collecting the tax from P.

Example 2. Unit card; given to individual. (i) The facts are the same as in *Example 1*, except that instead of selling a card, A gives a 30 minute card to P.

(ii) Although the card provides P with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, P does not pay for the service. Therefore, the card is not a PTC, even though it is called a prepaid telephone card by A.

(iii) Because the card is not a PTC, section 4251(d) does not apply. Furthermore, no tax is imposed by section 4251(a) because no amount is paid for the communications services.

Example 3. Unit card; adding value. (i) After using the card described in *Example 2*, P arranges with A by telephone to have 30 minutes of toll telephone service added to the card. The sales price is \$9. P is told to continue using the PIN provided with the card.

(ii) Because P purchased from a carrier other than for resale, P is a holder. The arrangement provides its holder, P, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, for which P pays in advance of obtaining service; therefore, the arrangement is a PTC. Because the value of the PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, the PTC is an untariffed unit card. Because it is transferred by the carrier to the holder, the face amount is the sales price (\$9).

(iii) The arrangement is a PTC; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from A to P. Accordingly,

at the time of transfer, P is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is \$0.27 ($3\% \times$ the \$9 face amount). Thus, the total paid by P is \$9.27, the \$9 sales price plus \$0.27 tax. A is responsible for collecting the tax from P.

Example 4. Dollar card; sold other than for resale. (i) On May 1, 2000, B, a carrier, sells 100,000 cards it calls prepaid telephone cards to Q, an auto dealer, for \$50,000. Q will give away a card to each person that visits Q's dealership. B provides Q with a PIN for each card. The face of each card is marked \$3. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because Q purchased from a carrier other than for resale, Q is a holder. Each card provides its holder, Q, with a fixed amount of communications services (\$3 of toll telephone service) to be obtained by means of a PIN, for which Q pays in advance of obtaining service; therefore, each card is a PTC even though Q's visitors do not pay for the cards. The value of each PTC is designated in dollars; therefore, each PTC is a dollar card. Because the PTC is a dollar card, the face amount is the designated dollar value (\$3).

(iii) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTCs are transferred from B to Q. Accordingly, at the time of transfer, Q is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is \$9,000 ($3\% \times$ the \$3 face amount \times 100,000 PTCs). Thus, the total paid by Q is \$59,000, the \$50,000 sales price plus \$9,000 tax. B is responsible for collecting the tax from Q.

Example 5. Tariffed unit card; sold to transferee reseller. (i) On May 1, 2000, C, a carrier, sells 1,000 cards it calls prepaid telephone cards to R, a convenience store owner, for \$7,000. C provides R with a PIN for each card. The value of the cards is not denominated in dollars, but the face of each card is marked 30 minutes and a tariff of \$0.33 per minute has been filed for the minutes on each card. R agrees that it will sell the cards to individuals for their own use and at a price that does not exceed \$0.33 per minute. R actually sells the cards for \$9 each (that is, at a price equivalent to \$0.30 per minute). The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because R purchased from a carrier for resale, R is a transferee reseller. Because R's customers will purchase other than for resale, they will be holders. Each card sold by R provides its holder, R's customer, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN provided by the

carrier, for which R's customer pays in advance of obtaining service; therefore, each card is a PTC. Because the value of each PTC is not designated in dollars and C sells the PTCs to R subject to an arrangement under which the price at which the PTCs are sold to holders will not exceed the designated number of minutes on the PTC multiplied by C's tariffed price per minute, each PTC is a tariffed unit card. Because the PTCs are tariffed unit cards, the face amount of each PTC is \$9.90, the designated number of minutes on the PTC multiplied by the tariffed price per minute ($30 \times \$0.33$), even though the retail sale price of each card is \$9.

(iii) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from C to R. Accordingly, at the time of transfer, R is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is \$297 ($3\% \times$ the \$9.90 face amount $\times 1,000$ PTCs). Thus, the total paid by R is \$7,297, the \$7,000 sales price plus \$297 tax. C is responsible for collecting the tax from R.

Example 6. Unit card; sold to transferee reseller. (i) On May 1, 2000, D, a carrier, sells 10,000 cards it calls prepaid telephone cards to S, a convenience store owner, for \$60,000. D provides S with a PIN for each card. The value of the cards is not denominated in dollars, but the face of each card is marked 30 minutes. A tariff has not been filed for the minutes on each card. S will sell the cards to individuals for their own use for \$9 each. D also sells a card that provides 30 minutes of the same type of communications service at its retail store for \$9. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because S purchased from a carrier for resale, S is a transferee reseller. Because S's customers will purchase other than for resale, they will be holders. Each card sold by S provides its holder, S's customer, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN provided by the carrier, for which S's customer pays in advance of obtaining service; therefore, each card is a PTC. Because the value of each PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, each PTC is an untariffed unit card.

(iii) The PTCs are untariffed unit cards transferred by the carrier to a transferee reseller. Thus, the face amount is determined under paragraph (c)(3)(ii) of this section, which permits D to choose from three alternative methods. Under paragraph (c)(3)(ii)(A)(1) of this section, the face amount of each PTC would be \$9, the highest amount for which D sells to holders purchasing a single PTC. Alternatively, under

paragraph (c)(3)(ii)(A)(2) of this section, the face amount of each PTC would be \$8.10, computed as follows: $135\% \times$ the \$60,000 sales price $\div 10,000$ PTC's. Finally, under paragraph (c)(3)(ii)(A)(3) of this section (assuming the PTCs are of a type that ordinarily is used entirely for domestic communications services), the face amount of each PTC would be \$9 ($\0.30×30 minutes).

(iv) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTCs are transferred from D to S. Accordingly, at the time of transfer, S is liable for the 3 percent tax imposed by section 4251(a). Assuming that D chooses to determine the face amount as provided in paragraph (c)(3)(ii)(A)(2) of this section, the amount of the tax is \$2,430 ($3\% \times$ the \$8.10 face amount $\times 10,000$ PTCs). Thus, the total paid by S is \$62,430, the \$60,000 sales price plus \$2,430 tax. D is responsible for collecting the tax from S.

Example 7. Transfer of card that is not a PTC.

(i) On May 1, 2000, E, a carrier, provides a telephone card to T, an individual, for T's use in making telephone calls. E provides T with a PIN. The card provides access to an unlimited amount of communications services. E charges T \$0.25 per minute of service, and bills T monthly for services used. The communications services acquired by using the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Although the communications services will be obtained by means of a PIN, T does not receive a fixed amount of communications services. Also, T cannot pay in advance since the amount of T's payment obligation depends upon the number of minutes used. Therefore, the card is not a PTC.

(iii) Because the card is not a PTC, section 4251(d) does not apply. However, the 3 percent tax imposed by section 4251(a) applies to the amounts paid by T to E for the communications services. Accordingly, at the time an amount is paid for communications services, T is liable for tax. E is responsible for collecting the tax from T.

(f) *Effective date.* This section is applicable with respect to PTCs transferred by a carrier on or after the first day of the first calendar quarter beginning after January 7, 2000.

[T.D. 8855, 64 FR 1057, Jan. 7, 2000; 65 FR 10153, Feb. 25, 2000]

§ 49.4252-1 General telephone service.

(a) *In general.* The term "general telephone service" means any telephone or radio telephone service furnished in connection with any fixed or mobile telephone or radio telephone